of the date of the act of bankruptcy which leads to a receiving order being made. If such receiving order be made the whole of the assets vest in his trustee as from the date of the act of bankruptcy. He is, therefore, in the position that should such a contingency occur he is from the date of the act of bankruptcy something less than a mere trustee of his assets for the creditors in his bankruptcy. Until this state of suspense has been removed either by a receiving order or by lapse of time, he has no right to deal with those assets that were in his hands, and can give no title in them to any transferee with notice. Similarly, with regard to the debts and other choses in action which form part of his estate, he cannot collect them or give a valid discharge for them, and anyone making a payment with notice of the act of bankruptcy does so at his peril."

The judgment debtors herein, at no time relevant to the issues in this application were in a position to deal with their assets or to confer any title to the assets they gave away. Nor could the petitioning creditors who were aware of the act of bankruptcy have acquired a valid title to the money handed over to them. In the result, I must hold that, notwithstanding the payment of $2,000 by the debtors to the creditors herein, the debt due and owing is still $10,983.80 as mentioned in the petition.

The last point I have to consider is in regard to the question of the validity of the service of the bankruptcy petition. It was contended that the service was bad because the copy of the petition posted on the outer door of the judgment debtors' premises was unsigned and the copies posted on the notice board of the Ipoh High Court and Magistrate's Court, respectively, were unsigned and not sealed.

The copy of the petition which was posted outside the outer door of the debtors' premises was shown to me and I was satisfied that it was sealed but unsigned.

In regard to the copies posted on the notice board of the courts, Chong Ah Kwan the sole proprietor of the judgment debtors in his affidavit of the 31st of January 1966 states:

"I have, since the sighting of the said copies of the bankruptcy petition caused an inspection on the notice board of the High Court and the Magistrate's Court, Ipoh, and have been advised that copies of the petition posted there were not sealed copies."

In reply to this allegation, Khor Kim Teik the managing partner of the judgment creditors in his affidavit dated the 12th of February 1966 states in paragraph 8:

"I deny that the copy of the bankruptcy petition posted outside premises No. 161 Kampar Road, Ipoh, was unsigned or that the copies of the bankruptcy petition posted on the notice board of the high court and the magistrate's court, Ipoh, were not sealed copies.'

Whatever may be the truth, it is apparent that Chong Ah Kwan had relied on information obtained from an undisclosed source for the statement that the copies posted on the notice board were unsealed. This evidence is therefore inadmissible and I have no reason to believe that the Bankruptcy Rules were not strictly complied with.

Now, Rule 107 of the Bankruptcy Rules requires that "a creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition." The simple meaning of this is that what is required to be served is not a signed copy of the petition but a sealed copy. Nowhere in the rule is it stated that the sealed copy for service should be signed by the petitioner. Rule 108 provides that where personal service could not be effected, the petition shall be served "in such manner as the court may direct and that such petition shall then be deemed to have been duly served on the debtor." The order for substituted service herein made by the Registrar reads:

"*IT IS ORDERED* that the creditors' petition herein be served on the judgment debtors by way of substituted service by posting copies of same together with a copy of this order on the outer door of the premises No. 161, Kampar Road, Ipoh, the abode of the judgment debtors, the notice board of this Honourable Court and at the magistrate's court, Ipoh, and that such service be deem good and sufficient service....."

It is therefore clear that by posting a sealed but unsigned copy of the petition, neither the order of the registrar nor any mandatory provision of law had been infringed. But even if it is assumed for argument's sake that the service copy of a petition should be signed, on the authority of *Au-Yong* v. *Dicum & Another*,[6] the omission to do so would not be an illegality but only an irregularity which could be cured by section 131 of the Bankruptcy Ordinance.

The application before me is therefore dismissed with costs and a receiving order will be made on the petition.

Order accordingly.

Application dismissed.

Solicitors: *S. A. Lingam; N. Sharma.*

HAJI WAN OTHMAN & ORS. v. GOVERNMENT OF THE FEDERATION OF MALAYA

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Ong Hock Thye F.J.) March 7, 1966]

[Penang — Federal Court Civil Appeal No. 22 of 1965]

Pensions Ordinance, 1951 — Pensions Regulations, 1951, Regulations 5 and 15 — Exercise of option under regulation 15 — Whether person can claim full pension after expiry of ten years.

The appellants in this case had exercised their option under regulation 15 of the Pensions Regulations, 1951, to receive a pension at the rate of three-fourths of such pension together with a gratuity equal to ten times the amount of the reduction so made in the pension. Having outlived the period of ten years they claimed that they were entitled to full pension after the expiry of the

ten years. Their application for declarations was dismissed by Suffian J. who held that the court had no power to adjudicate on the question and that in any event the interpretation of the regulation set up by the appellants was untenable ([1965] 2 M.L.J. 31).

Held: the question was one of construction of regulation 15 of the Pensions Regulations, 1951, and this was clear. Where an officer was granted a pension he may at his option take that pension or take a pension at the rate of three fourths of that pension and a gratuity consisting of a lump sum and once having exercised the option it was irrevocable.

[**Editorial Note:** Pensions Regulations, 1951 has been replaced by the Pensions Regulations, 1957. Regulation 15 corresponds to reg. 16 of the new Regulations.]

Cases referred to:—

(1) *Nixon* v. *Attorney-General* [1930] 1 Ch. 566 C.A.; [1931] A.C. 184, H.L.

(2) *Wigg* v. *Attorney-General* [1927] A.C. 674.

(3) *In re Transferred Civil Servants (Ireland) Compensation* [1929] A.C. 242.

FEDERAL COURT.

O. L. Phipps for the appellants.

Au Ah Wah (Treasury Solicitor) for the respondent.

Cur. Adv. Vult.

Thomson L.P.: This appeal raises the question of the position of government pensioners who have elected to be treated under the provisions of what is now regulation 16 of the Pensions Regulations, 1957 (L.N. 233 of 1957) which has replaced regulation 15 of the 1951 regulations. Regulation 15 of the 1951 regulations provided that a person to whom a pension was granted might elect to receive instead of the full pension calculated in accordance with the regulations a reduced pension and a lump sum equal to ten times the difference between the reduced pension and the full pension that would have been payable if a lump sum had not been paid.

It has hitherto been the accepted interpretation of this regulation that when a pensioner had elected to receive a lump sum under it that was, so to speak, the end of the matter and that for the rest of his life irrespective of however long he lived he could receive the reduced pension only. It is the contention of the appellants that that is wrong. The lump sum should be treated as an advance of pension and if and when the pensioner has lived for ten years after commencing to draw pension he should be treated as having repaid that advance and be then allowed to draw pension at the full rate without reduction. The Government having turned a deaf ear to representations made by an association of which the appellants are members they have now invoked the assistance of the courts and have asked for a series of declarations (the exact terms of which are not very clear) embodying their view of the matter.

The case was heard by Suffian J., who refused to make the declarations asked for. He took the view that by reason of the provisions of the pensions law as a whole the courts have no power to adjudicate on such a question as is raised by the case, a point on which he clearly relied on the decision of the English Courts in the case of *Nixon* v. *Attorney-General.*[1] But he also held that in any event, if he had power to adjudicate in the matter, the interpretation of the regulation set up by the appellants was untenable. On these grounds he refused to make declarations as prayed or at all.

Against that decision the appellants have now appealed.

It is not clear in which of the States of Malaya each of the appellants served but in every case the Federal Government is now liable for payment of their pensions and I think it is conceded on both sides that in each of the States from which they come the law at all material times has been the law formerly in force in the Federated Malay States, that is Perak, Selangor, Negri Sembilan and Pahang, and now in force throughout Malaya.

Public service pensions of the modern type based on emoluments at the time of retirement and years of service, were introduced in most of the States towards the end of the last century, the system being based in the main on the United Kingdom Superannuation Acts. It is not, however, necessary to deal with the early history of the local legislation in detail because the law in force throughout Malaya is now contained in the Pensions Ordinance, 1951, and the Pensions Regulations, 1957 (L.N. 233 of 1957) and by reason of section 20 of the Ordinance it is clear that all pensions granted under the previous pension laws of the individual States and Settlements are to be deemed to have been granted under it.

That law dates from pre-Independence days, being in what was more or less a common form in all the territories whose administration was supervised by the British Colonial Office, and certain difficulties arise by reason of modifications that have had to be made to it to conform with the present Constitution. Briefly, however, the scheme of it is that section 3 provides that it "shall be lawful" for the Paramount Ruler (it was originally the High Commissioner in Executive Council) to make regulations for the granting of pensions and gratuities to persons who have been employed in the public service. The remainder of the Ordinance contains provisions as to the classes of persons who may be granted pensions and as to the nature of the pensions that may be granted them and the conditions under which they may be discontinued. The detailed provisions relating to the amount

and calculation of the pensions which may be granted are not contained in the Ordinance itself but in the regulations made under it. The first regulations made under the Ordinance, which like the Ordinance itself very largely followed previous regulations, were set out in the Schedule to the Ordinance. These have now been replaced by the regulations of 1957 which came into effect on 6th May, 1957.

The present proceedings, however, have been conducted on both sides on the basis that the rights of the present parties are to be determined in the light of the 1951 regulations as originally enacted rather than the 1957 regulations and by reason of Article 147 of the Constitution that is probably right. In the circumstances it is not necessary to consider the 1957 regulations.

These 1951 regulations contain a great body of detailed matter which is not relevant to the present case and it is only necessary to mention two of them here.

Regulation 5, so far as it is material here, provides as follows:—

"Every officer holding a pensionable office in the public service in the Federation, who has been in the service of the Government for not less than ten years, may on his retirement be granted a pension at the rate of one six-hundredth (1/600th) of his annual pensionable emoluments in respect of each complete month of pensionable service."

Then there is regulation 15. Paragraph (1) of that regulation as originally enacted read as follows:—

"(1) An officer to whom a pension is granted under the Ordinance may, at his option exerciseable as hereinafter provided, be paid, in lieu of such pension, a pension at the rate of three-fourths of such pension together with a gratuity equal to ten times the amount of the reduction so made in the pension."

Paragraph (2) provides that an option exercised under the regulation may be revoked at any time prior to the officer's retirement. Then paragraph (3) is as follows:—

"(3) Subject as provided in paragraph (2) of this regulation, if an officer has exercised to option, his decision shall be irrevocable so far as concerns any pension to be granted to him."

At this stage it is necessary to say a few words regarding the history of regulation 15.

The principle which it embodies was introduced for the first time into the pensions law of the Federated Malay States by the Pensions (Amendment) Enactment, 1925 (No: 23 of 1925) which added a new section to the then existing law, the material portions of which are as follows:—

"15. (i) An officer to whom a pension is after the 31st day of December 1925, granted under this Enactment or under any rules made thereunder may at his option exerciseable as hereinafter provided be paid in lieu of such pension a pension at the rate of three-fourths of such pension together with a gratuity equal to ten times the annual value of the reduction made in such pension.

(ii) The option hereinbefore referred to shall be exerciseable:

. . . . . .

(b) In the case of any other officer within one month after he first attains pensionable status, or not later than the thirtieth day of June, 1926, whichever shall be the later date for exercising the option.

Provided

. . . . . .

(c) that if an officer has exercised the option, his decision shall be irrevocable so far as concerns any pension ultimately to be granted to him under this Enactment or any rules made thereunder."

Eventually that section was replaced by regulation 15 of the 1951 regulations with which we are concerned here.

Now, I do not propose to examine the precise nature of the "rights", if any, which the pensions law confers upon those for whose benefit it was enacted and the question of how far, if at all, these rights are a proper subject for determination by the courts.

On the one hand there is much to be said for what would appear to have been the view of the trial judge that there are no such rights capable of being determined by the courts. Section 5 of the 1951 Ordinance contains this provision:—

"No officer shall have an absolute right to compensation for past services or to any pension, gratuity or other allowance under this Ordinance".

That is substantially the same as section 30 of the Superannuation Act, 1834, and regarding that section Lord Hanworth said in the Court of Appeal in the case of *Nixon* v. *Attorney-General, supra* (at p. 592), that it "destroys the possibility of a claim of legal right". The same point was thus put by Viscount Dunedin in the House of Lords (at p. 191):—

"Section 30 of the Act of 1834 says there is to be no absolute right. My Lords, to get out of a provision that you are not to have an absolute right a positive provision that you are to have a right, is an argument which has only to be stated to be rejected."

On the other hand the analogy with the United Kingdom legislation can be carried too far. Our law does not contain anything which, on the face of it at any rate, corresponds with such provisions as the proviso to section 2 of the Superannuation Act, 1859, section 3 of the Superannuation Act, 1866, or section 9 of the Superannuation Act, 1887, all of which make it clear in terms that the determination of questions of the amount of pensions and gratuities is for the Treasury.

I am, however, as I have said, reluctant to express any views on the point in the light of the discussion to which we have listened in the present case. It would be impossible to do so

without expressing views that might have a bearing on the general question of how far the "rights" of public servants are justiciable under the present Constitution, a question which could not be determined without going into the question of the distribution among the present constitutional organs of the powers which in Great Britain make up the prerogatives of the Crown. Moreover, that question may require consideration of the Irish Free State cases [*Wigg* v. *Attorney-General* (2) and *In re Transferred Civil Servants (Ireland) Compensation* (2)] and in the present proceedings neither side has attempted to derive any assistance from these cases.

In any event it is unnecessary to consider the point here by reason of the views I have formed regarding the point which the appellants wish to have decided.

I am reluctant to say anything that may hurt the feelings of old servants of the Government who have had the fortune, good or bad, to survive their retirement by over ten years but I cannot refrain from quoting the following observations by Viscount Dunedin in the case of *Nixon* v. *Attorney-General, supra,* (at p. 190) :—

"It is the right of every litigant who has lost his case before the Court of Appeal to bring an appeal to this House unless there is some statutory reason against it, and one cannot wonder that the gentlemen who have brought this appeal feel strongly upon the matter in which they think that they have been unjustly dealt with in regard to a pension. But although I say that, that does not make any difference as to the quality of the appeal when brought. I confess that I have listened for some hours without discovering that even the ingenuity of counsel could bring forward any argument that was much worth consideration, and I think they were driven, as they were in duty bound driven, to the ultimate virtue of persistency."

The whole question is a question of construction of regulation 15 and the answer seems to be crystal clear. When an officer is granted a pension he may at his option, that means his choice, take that pension or take a pension at the rate of three-fourths of that pension and a gratuity consisting of a lump sum and the option is said to be irrevocable. There is not a word as to why the option is given, and there is nothing said about the purpose of the gratuity being to pay debts or to buy a house or anything of the sort or about it being an advance of pension. The officer is offered a choice and it seems to me that when he makes that choice that is the end of the matter. The motives which may have induced Government to enact that law in 1925 and to re-enact it in 1951 may be of historical interest but unless they can be deduced from the terms of the statute itself they are irrelevant to the interpretation of the statute.

In the circumstances I would dismiss the appeal with costs.

Barakbah C.J. (Malaya) and **Ong Hock Thye F.J.** concurred.

Appeal dismissed.

Solicitors: *Lim Kean Siew & Co.*

ANG AH BAK v. S.E.A.C. CO.

[O.C.J. (Choor Singh J.) March 11, 1966]

[Singapore — Suit No. 577 of 1963]

Landlord and tenant — Claim to recover possession on ground that tenant was receiving rent in excess of the recoverable rent — Tenant ceasing to receive such rent before termination of tenancy — Whether action lies — Control of Rent Ordinance, (Cap. 242), s. 15(1)(g).

The plaintiff sought to recover possession of the ground and first floors of a house. It was found on the facts that the plaintiff was the tenant of the whole premises and that the defendant firm was a subtenant of the plaintiff in respect of the ground and first floors of the house. It was alleged that the defendants had sublet a cubicle on the ground floor at a rental of $190 which was in excess of the recoverable rent for that part or alternatively that the rent received by them for the part sublet including the apportioned rental or value of the part of the premises retained exceeded one hundred and ten per centum of the recoverable rent paid by them. The defendants alleged that they had stopped recovering rent in excess of the maximum permitted before the tenancy was terminated and they argued that the plaintiff could not therefore invoke paragraph (g) of section 15(1) of the Control of Rent Ordinance.

Held: when a tenant sublets the premises or any portion thereof for a rental which is in excess of the maximum permitted under paragraph (g) of section 15(1) of the Control of Rent Ordinance, he loses the protection of the Ordinance and lays himself open to ejection by the landlord. The landlord may at any time thereafter terminate the contractual tenancy and recover possession of the premises from the tenant.

Cases referred to:—

(1) *Ida Fernandez* v. *Murugiah* [1950] M.L.J. 83.

(2) *K.S. Mohamed Ismail* v. *Choo Pin* [1954] M.L.J. 183.

(3) *Hooi Moon* v. *Suppiah Chettiar* [1954] M.L.J. 186.

(4) *Woon Guat Chin* v. *Lim Siar Poon* [1954] M.L.J. 184.

(5) *Wong Yue v. Lim Teng Kooi* [1958] M.L.J. 53.

(6) *Wong Miew Chun* v. *Loh Fatt* [1961] M.L.J. 219.

CIVIL SUIT.

S. K. Lee for the plaintiff.

C. F. J. Ess for the defendants.

Cur. Adv. Vult.

Choor Singh J.: The plaintiff in this suit seeks to recover from the defendants possession of the ground and first floors of a house known as No. 11 Phillip Street, Singapore.

The plaintiff resides on the second floor of the house. She alleges that she is the tenant of the whole house and that the defendants hold